



# State Administration, Public Retirement, and Veterans' Affairs Interim Committee

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## 56th Montana Legislature

### SENATE MEMBERS

SUE BARTLETT, VICE-CHAIR  
E.P. "PETE" EKEGREN  
DON HARGROVE  
GLENN A. ROUSH

### HOUSE MEMBERS

MATT BRAINARD, CHAIRMAN  
EDITH J. CLARK  
TOM DELL  
CAROL WILLIAMS

### COMMITTEE STAFF

SHERI HEFFELFINGER  
RESEARCH ANALYST  
JOHN MacMASTER, ATTORNEY  
DAVID NISS, ATTORNEY  
JOANN JONES, SECRETARY

## MINUTES

Montana Association of Counties  
Helena, Montana  
November 8-9, 1999

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of documents.**

### COMMITTEE MEMBERS PRESENT

Rep. Matt Brainard, Chairman  
Sen. Sue Bartlett, Vice Chair

Sen. E.P. "Pete" Ekegren  
Sen. Don Hargrove  
Sen. Glenn A. Roush

Rep. Edith J. Clark  
Rep. Tom Dell  
Rep. Carol Williams

### STAFF PRESENT

David Bohyer, Director, Office of Research Policy & Analysis  
David Niss, Attorney  
Jo Ann Jones, Secretary

### VISITORS

Visitors' list, Attachment #1.

Draft

## **COMMITTEE ACTION**

C Approved the minutes of the September 9-10 meeting.

## **CALL TO ORDER AND ROLL CALL**

Rep. Brainard called the meeting to order at 1:30 p.m. Roll call was noted. (See Attachment #2.)

Sen. Bartlett moved to adopt the minutes of the September 9-10, 1999, meeting. The motion was approved.

## **REPORT ON THE HOMELESS STANDDOWN**

**Exhibit #1: DAV Homeless StandDown After Action Review**

**Exhibit #2: Printed copy of remarks made by James Jacobsen, MVAD**

**Exhibit #3: History of the Montana Standown 1998 & 1999**

**Exhibit #4: 1999 Homeless Standdown Healthcare Clinic Report**

**Exhibit #5: How to Start A Homeless Veteran Program**

Maj. John Walsh, MT ARNG, presented Exhibit #1.

Jim Jacobsen, Administrator, Montana Veterans' Affairs Division (MVAD), Department of Military Affairs (DMA), discussed Exhibit #2.

Debra Daggett, commander, Disabled American Veterans (DAV), said the majority of the homeless in Montana are either veterans or the dependents of veterans. She said that at the Homeless StandDown, 100 people were served and, of those, 63 were veterans and 20 more were dependents of veterans. She said that many who attended did not bring their children because they were afraid the children would be taken from them by a state agency.

She said her recommendation for future StandDowns was to decentralize it by conducting it in cities across the state.

Sen. Hargrove asked why there are homeless veterans. Ms. Daggett replied that some are disabled, some are mentally ill, some cannot live indoors, and some have just

slipped through the cracks because it's not possible to receive any sort of assistance payment or food stamps when they don't have a permanent street address. She said they are not choosing to be homeless, especially when they have children.

Sen. Hargrove asked if Ms. Daggett had statistics for Montana as compared to the nation. Ms. Daggett said Montana has a higher percentage of homeless per capita than the nation, plus a greater number of veterans per capita than the nation.

Sen. Hargrove asked why there is a higher percentage of veterans among the homeless than other segments of the population. Ms. Daggett said VietNam veterans have higher mortality rates, women veterans have higher incidences of breast cancer, and many are suffering from Post-Traumatic Stress Disorder (PTSD) plus other disorders. Many are unable to maintain employment or even cope with filling out forms for assistance. She said that some homeless veterans are told by those who are supposed to help that none is available.

Sen. Hargrove asked if part of the problem is that the bureaucracy is unable or unwilling to provide the support that they are supposed to be providing. Ms. Daggett said that was a huge part of the problem.

Sen. Ekegren asked if work with the homeless was continued after the StandDown. Ms. Daggett said follow up is attempted, but many of the participants return to their camps.

Sen. Ekegren asked if there was a proposed plan for legislative consideration. Ms. Daggett said one had been presented two sessions in a row.

Sen. Ekegren said it disturbs him that people in need cannot receive help. He asked if the homeless get turned away or if they don't pursue assistance. Ms. Daggett said

many people are turned away and said that if it weren't for the God's Love homeless shelter in Helena, there would be many more homeless people in Helena.

Sen. Ekegren asked if a homeless veteran is reluctant to leave camp because of fear that the state will take away their children, how can state agencies help them. Ms. Daggett said a lot of the children who live in the homeless camps attend school. The families want to mainstream but it's difficult to do.

Rep. Williams asked if the DAV and the VietNam Veterans of America (VVA) are the custodians of the data that was collected at the StandDown. Ms. Daggett said they are. Rep. Williams asked if federal money was available only to state-run programs, or if it's available to private organizations, too. Ms. Daggett said federal money is available to anyone who can write a good grant request. She said an organization within the DAV turned down a grant request, stating that the request was too holistic.

Sen. Hargrove asked Mr. Jacobsen to respond to the implication that jobs are not being done properly. Mr. Jacobsen said that the MVAD is not designed to help the homeless veteran with food, shelter, money, or transportation, but the MVAD does refer them to other organizations who can provide those things. He said that although he has not received many complaints of failure in the system, he is certain that there are isolated incidents.

Michael O'Neil, Golden Triangle Community Mental Health Center, discussed Exhibit #4.

Rep. Dell asked if any Billings organizations have been approached to establish a link. Mr. O'Neil said the mental health center in Billings was aware of the effort being made

to help the homeless in Helena. He said resources are available in every community, but the question is whether anyone will step forward to assist.

Sen. Roush asked Ms. Daggett if the veterans' organizations would want to handle the programs any other way than what is being done now. Ms. Daggett said the VVA will not do another StandDown because it's just too much work for too few people. She said that another agency is not necessary. Sen. Roush asked how to resolve the problems of homeless veterans not approaching other state agencies for help. Ms. Daggett said that, although the state agencies do what they can, part of the problem is that crises do not always occur during regular office hours.

Rick Salyer, chairman, Homeless Task Force, and former commander, DAV, said a lot of the Committee's questions would have been answered if they had attended the StandDown. Many of the people who provided security were veterans who had been living in the mountains. He said that Mr. Jacobsen is working well within the parameters that he has and that he has been a major support to the effort. What is needed is cooperation, communication, and statewide involvement. He said that some homeless veterans have been flown to Salt Lake City for medical care and then flown back to Helena after treatment. When they arrive at the Helena airport, they are merely told that the homeless mission is down the road.

Mr. Salyer recommended making the Homeless StandDown a part of the state's millennium celebration. He said that the MVAD needs more money and more authority, and that the state needs a domiciliary. He said there are veterans funds not being used and that money can be used to help promote the program and to help the civilian providers.

Mr. Salyer said that a number of homeless veterans need alcohol or drug treatment, plus other health care. He said that veterans will continue to help other veterans, no matter what the state does or does not do for them.

Rep. Brainard said that if the issue didn't involve veterans, the Children and Families, Public Health and Human Services Interim Committee would be hearing this testimony. He asked if veterans should be separated from the other homeless. Mr. Salyer said there is money dedicated to veterans issues. The StandDown worked well to reach out to all the homeless but veterans, generally speaking, feel better reaching out to another veteran.

Rep. Brainard commented that money is not that easy to appropriate. Mr. Salyer said that in Wisconsin, 19 programs were implemented within 3 years, so it is possible, even considering difficulties in obtaining money.

Rep. Brainard asked Mike Hanshew, Administrator, Senior and Long-Term Care Division, Department of Public Health and Human Services (DPHHS) for his perspective. Mr. Hanshew said that there are separate and distinct services available for veterans and that federal money is available, but it has to be veteran specific. He suggested the Committee hear testimony from Hank Hudson at DPHHS because he manages the homeless programs.

Sen. Hargrove said the homeless veterans issue could be part of the Veterans' Affairs Subcommittee's duties. Rep. Brainard said he did not object to that.

Ann Hamerla, homeless shelter nurse, Lewis & Clark County Health Department, said that homeless people are increasingly getting more ill. She said there are more Hepatitis victims and more people who are testing HIV positive. It takes a while to build a rapport with the homeless, especially veterans, because it takes a long time to

build trust. She said that veterans have to go to the VA hospital on the DAV van at 8:00 a.m. and don't have an appointment until 4:30. Some don't get seen at all and then have no ride back to town because it's past the DAV van hours. She said that about 50 per cent of her patients are veterans.

Jim Heffernan, past commander, American Legion Post #2, said that not long ago he received a phone call from a VietNam veteran who had gone to the VA hospital at Ft. Harrison for treatment. The veteran said that when he walked into the Emergency Room, a member of the staff said, "Oh, you're here for another fix." While the veteran was still at the hospital, he was told that one had had his appointment changed twice without being informed, and another veteran had traveled from Great Falls for an appointment, only to be told on arrival that the appointment date had been changed, again, without being informed. Mr. Heffernan recommended that anyone who is wondering how to help homeless veterans go to God's Love and observe what is being done there.

Mike Hankins, co-chair of security task force for the StandDown and Korean veteran, said that when a committee asks for money to be appropriated, there will be questions about why those funds are needed. He said that the answer is that, in his estimation, for every veteran living in a cave, old camper, or camp, there are 2.2 children involved. He said the problem will not go away and people who are growing up now will eventually be a huge financial burden on society because they have no real contact with society. He said the children are disadvantaged, not from abuse or neglect, but because of benign ignorance.

Larry Thebo said that at one point in his life he was homeless. He began to help others when he came out of homelessness and he began to get phone calls from veterans who were being discharged from the VA hospital and had no place to go, so he opened his home to help them.



Leslie Peirson, Wellness and Community Education Program, St. Peter's Hospital, said that it was a very moving experience to be involved in the StandDown. She said St. Peter's Hospital donated approximately \$4,000 to \$5,000 in staff time and supplies.

Maria Nyberg, social worker, God's Love, said the question of who receives services is why people fall through the cracks of the system because the person cannot be tailored to the program. She said that society sometimes sets up obstacles without realizing it. She said that unless the services provided to the needy are as similar to mainstream services as possible, those people cannot enter the mainstream.

Mark Pearson said that he is one of the success stories. He said that he, his wife, and child were homeless until 18 months ago. They lived at God's Love for 6 months and now reside in Helena housing.

Mr. Salyer urged the Committee to examine what is happening and make an attempt to understand. He said that social services is a major issue for any legislative body.

David Miller, mental health social worker, God's Love, said he works with many VietNam veterans. He said he would like to have an on-site VA representative to better represent what is available to help veterans.

#### **COMMITTEE DISCUSSION**

Sen. Bartlett requested that the Veterans' Affairs Subcommittee investigate the denial of services to determine whether it stems from cutbacks in services or reductions in programs.

Rep. Williams said she concurred, and recommended the Subcommittee visit the VA hospital and God's Love.

Rep. Brainard asked staff to research federal funding that may be available.

Sen. Roush said he would like to examine how other states handle similar problems. He said the VA hospital is a federal facility and the Committee can write letters to Washington to complain, but he doesn't know how to make them listen to a state committee. Rep. Brainard said that it is within the scope of the Committee to make recommendations to the Montana delegation to Congress.

Mr. Salyer said that about 10 years ago, the Portland VA Center was recognized as being one of the worst health care providers in the nation. State legislation made them accountable for the quality of health care service they provided.

#### **RECESS**

Sen. Bartlett moved the Committee stand in recess until 8:00 a.m., November 9. The Committee recessed at 4:25 p.m.

**State Administration, Public Retirement, and Veterans' Affairs Interim Committee**  
**November 9, 1999**

**CALL TO ORDER**

Rep. Brainard called the meeting to order at 8:05 a.m. Roll call was noted.

**PER BOARD REPORT**

**Exhibit #6: On Implementation of the Public Employees' Retirement System Defined Contribution Plan**

Mr. O'Connor discussed Exhibit #6.

Terry Teichrow, president, PERB, discussed the DC plan structure and investment option design. (See Exhibit #6.)

Rep. Brainard said he wished to officially express his opposition to self-directed brokerage accounts included within DC plan options. He said the purpose of the DC plan was for retirement accounts, not investment accounts. He said that he would urge the Board to inform employees that the most socially responsible thing they can do is manage their own retirement.

Rep. Brainard asked if a self-directed brokerage account can cause disqualification as a retirement program, according to IRS rules. Mr. O'Connor said he didn't know whether it meets IRS restrictions, but there is increasing pressure for the creation of these types of accounts.

Sen. Bartlett asked for clarification on fees for self-directed brokerage accounts. She said the Employee Advisory Investment Council included some potentially risky investment choices to allow a wide selection of choices for the employee. She said employees have to take any financial risks early in their careers. Mr. Teichrow said

that the broker's fees and the increased risk factor will cause greater cost in a self-directed brokerage account.

Rep. Dell asked if Section 457 plan [the deferred compensation plan] members have said they want a self-directed brokerage account. Mr. Teichrow said no.

Sen. Hargrove asked if there is a body of experience available from those who have invested through the brokerage accounts. Mr. Teichrow said he had recently attended a conference in San Antonio and the risk involved in those accounts was discussed, but nothing specific was stated about anyone falling into poverty. He said that many Section 401k plans have self-directed brokerage accounts.

Sen. Hargrove asked at what point the costs for materials are considered in the education component of the DC plan. Mr. Teichrow said the costs are not yet known, but the answer will be received in responses to the RFP. He said that education will be expensive and time-consuming. Mr. O'Connor said that it is hoped a tiered response will be received so that the available services and the cost per member can be determined.

#### **STATE CONTRACTING REPORT**

**Exhibit #7: Confusing MCA Contracting Law: Suggestion**

**Exhibit #8: Legal Memorandum, A Comparison of State Construction Contracts and State Contracts for Services**

John MacMaster, staff attorney, discussed Exhibit #7 and Exhibit #8.

Sen. Bartlett recommended that Mr. MacMaster discuss the clarification of prevailing wage laws that were amended in 1997 and 1999.

#### **MONTANA PROCUREMENT ACT**

**Exhibit #9: SJR 9 Study of State Contracting, Statutory Issues and Options  
Worksheet**

**Exhibit #10: Public Contract Requirements**

**Exhibit #11: Basic Procurement Workflow**

**Exhibit #12: Copy of letter to Lonnie Box, Intelicom, Inc., from New York Department  
of Transportation, dated April 7, 1999**

Mr. Bohyer discussed Exhibit #9.

Marvin Eicholtz, Administrator, Procurement & Printing Division, Department of Administration, and Sheryl Motl, administrative officer, Procurement & Printing Bureau, discussed Exhibits #10 and #11.

Sen. Ekegren asked if eliminating the provisions for public protest on contracts would create the impression that something was unfair with the bidding process. He said that, in the past, he had experience with specifications being written so that the bidding process was influenced in the favor of one particular vendor. Rep. Brainard said he has seen businesses fail because of frivolous complaints against them which can be very expensive and time-consuming. He said that there may be merit in stiffening the protest requirements.

Rep. Brainard asked how the public purse is safeguarded when the agencies are allowed more discretion and greater subjectivity in awarding contracts. He said whenever a large amount of money is involved, there is always a temptation to abuse the system. Mr. Eicholtz replied that an objective viewpoint is always possible. He said that as contracting for goods and services becomes more complex, it becomes more difficult to identify objective criteria. He said that more flexibility is what is needed and said that in Montana, the process is always open to public inspection.

Sen. Bartlett said she is concerned about how the state can institutionalize the knowledge gained from experience in contracting. Ms. Motl said that at times during a process, it becomes obvious that the wrong course has been pursued, but options are limited at that point. She said that's why the agencies need more flexibility.

Rep. Brainard asked how many times does the state have to be on the cutting edge, and asked whether it is in the state's best interest every time. He asked how often the DOA is put in the position of having to re-think the process. Mr. Eicholtz said that it is not often, but when it happens, it can be very costly. He said it most often occurs in contracting for information technology (IT). Rep. Brainard asked if IT was where greater flexibility is needed. Ms. Motl said an example is MT PRRIME because the Procurement Bureau guided the process, but the MT PRRIME team had to learn what was available. She said the flexibility is needed to account for the learning process.

Steve Garrison, staff attorney, Department of Transportation (MDOT), said that MDOT deals with all types of procurement laws as well as federal regulations because federal money is usually involved in highway construction. He said the MDOT has standard bid bond and performance bond forms, and has its own performance specifications. He said the issues of responsibility are contained within the Administrative Rules of Montana (ARM) but have never been used.

Sen. Hargrove commented that the state can be so objective that nothing is done correctly. He said if everything is contained within statute, one can assume that there are no decisions to be made. He asked how much subjectivity is involved. Mr. Garrison said the evaluating experience and expertise in the architectural and engineering divisions involve subjectivity.

Russ Katherman, Contract Officer, Architecture & Engineering Division, DOA, said that the DOA encounters subjectivity when selecting architects and engineers. He said that discretion enters in, e.g., when there has been an error made on a bid form, because the Department can waive the error if it is determined that it was not material to the awarding of the contract.

Mr. Garrison said that statute specifies that agency procedures and guidelines have to provide a minimum number of specifications, including location, which can be nebulous in a statewide contract.

Sen. Hargrove asked if the state has entered into contracts in which statutes and rules have made the agency do something wrong. Mr. Garrison said the example of the location specification would serve. He said he instructs staff to include location, but to give it a very low percentage rating.

Tom O'Connell, Administrator, Architecture & Engineering Division, DOA, said that his office does not have the flexibility to discard the lowest bid because the contractor's work experience is bad. He said there are subjective phases in design and construction projects.

Sen. Bartlett asked if there are areas which need improvement in contract enforcement. Mr. O'Connell said the contract to build the new hospital at Warm Springs is a good example. He said the contractor had just satisfactorily completed a contract to construct the new Business Administration Building at the University of Montana, so it was believed that a good contractor had been awarded the bid. The original completion date was June 27, 1999, but construction is still being done and the new completion date is December 23. He said attempting to enforce that contract has led to a dispute between the state and the contractor, but it is unknown whether the contract could have been written differently to avoid it.

Mr. Garrison said that just because a contractor performs well on one project, it doesn't necessarily follow that the same contractor will perform well on the next project. Diane Tordale, MDOT, said that, at times, there are personality conflicts between the state representatives and the contractor's personnel that affect how the contract is carried out.

Sen. Roush questioned giving preference to experienced contractors and asked how a new contractor might gain experience. Sam Naseem, Preconstruction Bureau, MDOT, said that, according to federal regulations, preference cannot be given to in-state bidders but only to location. He said the state is bound by deadlines and cannot award contracts so that relatively inexperienced contractors can gain experience. Mr. Garrison said the federal government and local communities also contract for construction projects, so the contractors are not limited to working only for the state. He said experience is required by law as a selection criteria but the agency has discretion in the percentage given to that criteria. It can be counter-balanced by the experience level of the personnel assigned to the project. He said the agency has to be a steward for public money and cannot allow huge contracts to become testing grounds.

Rep. Brainard asked how the Procurement & Printing Bureau handles experience and track record in awarding contracts. Ms. Motl said the services provided by architects, engineers, lawyers, doctors, and other professionals are not covered by the Montana Procurement Act. She said the Bureau struggles with that issue on contracts that are covered by the Act and sometimes utilize a pass/fail system. Mr. Eicholtz said the question is how to get the best value for the state's money. He said the decisions are not usually in the hands of a single individual but rather in an evaluation committee.

Rep. Brainard asked if the Procurement & Printing Bureau is able to specify that certain people will be involved, e.g., engineers in IT contracts. Mr. Eicholtz said normally they



are not selected but rather identified so the evaluation committee can be considered that as a factor, too. Rep. Brainard asked if the company can be held to providing the personnel that it has identified. Mr. Eicholtz said that personnel can change but the company must provide the identity of the replacement, and the state usually has some say whether or not the replacement is satisfactory.

Mr. O'Connell said that the legislature has made it simpler in recent sessions to appoint architects and engineers. Although it is not mandated in statute, Montana architects and engineers have always received preference.

Sen. Hargrove asked if that unofficial preference has created problems with other states. Mr. O'Connell replied that it hasn't, to his knowledge. He said that when out-of-state firms are interested in Montana contracts, they are told the best way to get involved in a project is to team up with a Montana firm.

Rep. Brainard asked if other states utilize a non-legislated preference system, too. Mr. Eicholtz said if there is a sealed bid process, most likely there is not a preference system. He said he wouldn't be surprised, however, if it occurred under unsealed bid processes.

Sen. Roush said the 1999 Legislature passed a bill concerning Canadian contractors being allowed to bid on Montana highway projects. He asked if there had been any change on the Canadian side and if U.S. contractors can bid on Canadian highway projects. Mike Foster, executive director, Montana Contractors' Association, said the Association has tried to get a reciprocal agreement with Canada and progress has been made.

Rep. Brainard said the Business, Labor, and Agriculture Interim Committee has raised a question about obtaining goods and services from specialized vendors, and asked if

the DOA representatives have seen the letter. Ms. Motl said they have seen the letter, but aren't aware of the specifics involved. Mr. Eicholtz added that they are aware of the nature of the question.

Sen. Hargrove asked how many states discriminate against Montana businesses by statute. Mr. Bohyer said he did not know because he has not done a search of all 50 states, but does have access to a document that outlines procedures in some states.

Mr. Naseem commented that Arizona requires a consulting firm to be located within the state because of privatization measures taken in that state.

Ms. Motl said preferences come into play with contracting for goods and services. She said only three or four states have preferences similar to Montana, and other states have preferences on specific items, such as beef or steel. She said that approximately 30 other states have reciprocal clauses in statute that retaliate against Montana businesses, which hurts Montana businesses trying to expand into those states.

Mr. Katherman commented that one Montana firm had to establish an office in Wyoming in order to perform work there for a school district.

Rep. Brainard opened the floor to public comment.

James Kembel, Montana Technical Council, TIAA-CREF, said that he has also heard complaints about hiring only experienced contractors, similar to the comments made by Sen. Roush.

Trigg Dahle, Intelicom, said his company has been directly affected by reciprocal clauses in other states. He said Intelicom is a new company, seeking to expand its

market. He said that although the company was the lowest responsive bidder this past summer, it was denied the contract in New York because their state statutes require denial of contracts to firms from states where preferences are required. (See Exhibit #12)

Mr. Dahle said that Intelicom was also the lowest responsive bidder in Michigan but their Department of Transportation wanted to disallow their bid because they had no office located within that state. He said that Intelicom did not get the contract although preferences are not legislated in Michigan law.

Mike Foster, Montana Contractors' Association, said the 8 per cent preference for printing was enacted into law to prevent large, multi-state firms from unfair competition with small Montana firms. He said that preferences may no longer be needed because of the growth of e-trade. He said that he wanted to emphasize that there are no preferences allowed in highway construction where federal money is involved. He said that during the 1999 legislative session, a bill was passed that created a preference for a business located within the county when that county is bidding out a contract. He commented that the only time preferences hurt is when they favor out-of-state business.

### **RECESS**

Sen. Bartlett moved to recess until 1:30 p.m. The motion passed unanimously.

### **CALL TO ORDER**

Rep. Dell, acting chairman, called the meeting to order at 1:30 p.m.

## **REPORT ON THE STATE'S BEST INTEREST**

**Exhibit #13: Statutory Guidance in RE "The State's Best Interest"**

**Exhibit #14: Sections of the Montana Code Annotated Addressing "The State's Best Interest"**

**Exhibit #15: An Introduction to "The Best Interest of the State"**

**Exhibit #16: Perspectives From Other States in RE "The Best Interest of the State"**

**Exhibit #17: Position Statement, Public Letting of Contracts, October 22, 1997, Montana Contractors' Association**

**Exhibit #18: Letter from Pioneer Telephone Service, dated November 9, 1999 to the Committee**

Mr. Bohyer discussed Exhibits #13, #14, #15, and #16.

Rep. Williams asked if the state's best interest in regard to economic growth had been discussed. Mr. Bohyer said that he did not recall having found any. He also said that economic growth may be a separate issue from enforcement of contracts and the procurement of goods and services.

Mr. Foster presented Exhibit #17. He said that he thought Rep. Williams' comments were very pertinent because there is an issue of taxpayer dollars going out of state or being retained within the state's economy. He said contractors want consistency, fairness in bidding, and the opportunity to bid because the construction industry is a highly competitive, high risk industry. He said that MDOT has developed an electronic bidding system that works very well because the software prompts the bidder if mandatory information is omitted and it does the mathematical calculations automatically, reducing the chance of error. He said that quality of goods and services is an issue but it can always be improved. Objectivity should be promoted and said that bonding is an important part of objectivity. He said that contract management is also important and that he was quite alarmed about comments made

in regard to discretion. He said that discretion equals subjectivity and that creates an opening for abuse of the system. He said that "best value" also implies subjectivity because value is a function of the specifications.

Mr. Bohyer asked how best interest works when the lowest bidder is an out-of-state firm, but yet policy is to keep taxpayer money within the state. Mr. Foster said the lowest bidder should have the contract.

Sen. Roush asked if bonding requirements are too high. Mr. Foster said that contractors consider bonds to be a cost of doing business and many say that they consider bonding a factor that ensures quality.

Rep. Dell asked how meeting specifications could be more effectively addressed. Mr. Foster said quality can be built into the specifications and is generally the simplest way to ensure quality. Mr. Garrison said quality is also affected by inspection, quality of personnel, and contract enforcement.

Mr. Eicholtz said that he had been addressing the Montana Procurement Act specifically when he spoke about the need for more flexibility and discretion. He said that most of the time a contract can be objectively designed with adequate specifications, but the troublesome situations are the ones in which the designers have to learn during the process, generally in the area of IT. He said that in procurement, the best interests of the state are those that are primarily the best value for the money. Discretion enters in to relatively minor decisions, but major decisions are not within the purview of only one individual.

Mr. Katherman said that Montana statute requires that 50 per cent of the work force on State buildings be Montana residents, and there is also a preference for Montana produced goods. He said more methods are available for bidding contracts than only

awarding for the lowest bid. Low bid removes most of the subjectivity and it requires 100 per cent performance and labor/payment bonds. He said getting the bond money is difficult if a contractor fails to perform and a low-bid policy requires awarding contracts to a contractor who may have performed poorly on a prior project.

Sen. Roush asked if the state's best interests would be protected if bonding were required on all projects. Mr. Katherman said the state reserves the right to cancel the contract if the contractor cannot provide the bond. He said that problems can occur in the bidding process, but they most generally occur when the job is late.

Ms. Tordale said the best interest of the state is the best interest of the taxpayers. She said the MDOT examines the specifications and bid documents with the contractors and ask for their input on improvement. She said the MDOT makes minor changes to specifications to ensure that all possible vendors can bid on them.

Rep. Dell said the pre-bidding conference was intriguing, and asked how it is done. Ms. Tordale said a letter is sent to those contractors the state knows will be interested. The MDOT maintains a regular mailing list, and the information is also posted to the Department's Internet site. Mr. Garrison said the idea of a conference is a good one, but the main problem is taking people away from other work to attend the conference. He said the MDOT also uses the pre-bidding conference on highway projects, but can't do it for all projects. He said the MDOT mandates pre-bidding conferences when the project is on Indian reservation land because the work is being done on foreign, sovereign soil. He said if a contractor fails to attend the pre-bidding conference, he is barred from bidding on that project.

Mr. Katherman said that the Architecture & Engineering Division also does pre-bidding conferences on nearly every project.

Riley Johnson, Montana/National Federation of Independent Businesses, said that many issues cannot be discussed at pre-bidding conferences because vendors cannot discuss trade secrets.

Mr. Naseem said his office is mostly concerned with design. The first selection is made on qualifications and the final selection is based on the understanding of the project. Negotiations are entered into after the first two stages are completed. He said cost proposals are compared with in-house estimates.

Mr. Bohyer asked if this procedure is followed on every project. Mr. Naseem said that when there are too many projects at once, several consultants are selected from a list that is maintained by the Department.

Mr. Katherman said that term contracts can save a lot of time for contracts under \$250,000 because statutes allows the Department director to let the bid from a list of three qualified contractors.

Mr. Bohyer said that contract delays can cause enormous expense during times of high inflation rates.

Mark Wissinger, Supervisor, Contract Plans Section, MDOT, said the electronic bid process has been an enhancement. He said it eliminates math errors and allows contractors to make last-minute changes to their bids. He said it was developed to address bidding process integrity due to math errors.

Webb Brown, Montana Chamber of Commerce, said the best interest of the state is meeting or beating quality standards at the lowest possible price. He said that the state's economic growth should also be kept in mind. He recommended that

consistency in application of the bidding process and fairness be goals for which to strive.

Sen. Bartlett asked why some people feel left out of the process. Mr. Brown said that technology sometimes leaves people out so traditional forms of communication have to be relied on, too.

Mr. Johnson said that one concern is that of Central Stores undercutting local prices for supplies. He said the issue of preferences must be addressed in some form and said that it will be on the issue list for the 2001 session.

Leona Williams, co-owner of Pioneer Telephone Service, distributed Exhibit #18. She said there was a bid letting by the state for equipment for telephone lines for the hearing impaired. She said all bid notices went to out-of-state companies and the bidder awarded the bid is not a manufacturer. She said the state maintains a list of 110 companies in that category and every tenth name was selected for a random mailing. She said that every company registered with the state as a vendor should receive a bid notice.

Howard Williams, co-owner, Pioneer Telephone Service, said that most of the afternoon's discussion had been about large businesses and urged the Committee to remember that Montana's biggest business is small business.

Sen. Hargrove asked how this happened. Mr. Johnson replied that judgments on qualification are being made without any prior research. Mr. Eicholtz said the trend is to go to bigger contracts to be more cost effective, writing contracts is expensive and staff levels are down. Procurement policy states that the best deal for the money is desired; how it impacts small business is a political question.



Sen. Ekegren said small business should be allowed to bid and, if they cannot provide the goods and services, they won't be awarded the bid.

Ms. Motl said the agencies provide their own vendor lists to the Procurement & Printing Bureau. Legislative auditors recommended doing a random selection notification and the Bureau strives for a minimum of 25 notifications. She said that bidding notices are posted on the Internet and in newsletters to reach those who are not notified directly.

Rep. Dell commented that the DOA is following the law but said he wished that there was a small business representative within the Bureau to address similar concerns.

Sen. Bartlett said the Legislature insists that agencies operate as efficiently and cost-effective as possible, but then criticizes them when there are unintended results. She said that it's expensive to mail out lengthy specification documents to 500 registered vendors and to manage that many more bids per project.

Sen. Ekegren said small businesses should be given the opportunity to pay a fee to ensure that they will be included on all bidding notifications. Mr. Bohyer said statute may preclude the DOA from doing that, but it could be an issue for the Committee to address.

Mr. Wissinger said the MDOT uses a fax notification system that can be programmed to run at night, outside regular business hours. He said he likes to see a large number of bidders on small projects.

Steve Turkiewicz, Montana Automobile Dealers' Association, said that he represents a narrow slice of the state bidding pie. He said the main issues are fairness and

consistency and that transportation for delivery of the product can be an item of high cost.

### **YOUTH CHALLENGE PROGRAM**

Mr. Bohyer said that Rep. Brainard had asked him to draft a letter to Sen. Waterman, Presiding Officer of the Children and Families, Health and Human Services Interim Committee (CFHHS), informing her that the SAIC would retain oversight functions of the Youth Challenge program, but that the CFHHS will be kept notified of any issues that may arise within their purview. Rep. Dell said that the CFHHS can call witnesses to testify before them, if they wish.

### **OTHER BUSINESS**

Mr. Bohyer said he'd like to determine which states the Committee wishes to examine in regard to procurement issues and state contracts. He has received six responses to eight surveys that he mailed out to the members. Rep. Dell recommended he proceed with the responses that he has received.

Mr. Bohyer said the surveys indicated that the state contracts most desired for further examination were MT PRRIME, term contracts, and incarceration contracts, respectively. After discussion, the desired contracts were MT PRRIME, term contracts, incarceration contracts, mental health contracts, and the POINTS project, respectively.

### **ADJOURNMENT**

Sen. Bartlett moved to adjourn; the motion passed unanimously. The meeting was adjourned at 4:10 p.m. The next meeting will be January 20-21, 2000.

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